Asbestos Litigation Reporter

THE NATIONAL JOURNAL OF RECORD OF ASBESTOS LITIGATION, MEDICAL RESEARCH, NEW AND CONGRESSIONAL ACTIONS, AND INDUSTRY RESPONSE

Published by Andrews Publications, Inc., Edgemont, Pennsylvania 19028 (215) 353-2565.

March 27, 1981

IN THIS ISSUE:

	PAGE
... CU SEEKS SUITS AGAINST U.S., CIGARETTE MAKERS	3,111
... INDEX TO DOCUMENTS IN THIS ISSUE	3,112
... APPELLATE BRIEFS FILED IN KEENE v. INA	3,114
... PLAINTIFFS WIN VERDICT IN SECONDARY EXPOSURE CASE	3,115
... 680 NEW JERSEY PLAINTIFFS COMPLETE SETTLEMENT	3,115
... DEFUNCT COMPANY'S INSURANCE CARRIER SUED	3,117
... FOUR DECLARATORY JUDGMENT ACTIONS CONSOLIDATED	3,117
... METROPOLITAN LIFE WINS ILLINOIS DISMISSALS	3,118
... SUIT SEEKS ADJUDICATION OF FECA CLAIM	3,119
... STATE LAW, NOT ADMIRALTY LAW GOVERNS CASE	3,120

COMMERCIAL UNION PRESSES DEFENDANTS TO SUE U.S., TOBACCO COMPANIES

Commercial Union Assurance Companies is writing defendants and primary insurance companies urging that they file third-party actions against cigarette manufacturers and the U.S. Government. The letters are going to all companies that purchased excess insurance from Commercial Union, the Asbestos Litigation Reporter has learned.

The letters raise the issue of just how far an insured is obligated to go in extending cooperation to an insurer, and how far the obligation of a primary insurer extends to secondary carriers.

In copies of the letters obtained by Asbestos LR (See P. 3,121), excess insured companies are told that Commercial Union believes "you should give immediate consideration to joining these parties in your asbestos lawsuits in order to obtain the maximum possible indemnity protection from your insurance coverage. Clearly, it is the legal obligation of your carriers to undertake this effort in your behalf without regard for the potential defense costs that may be involved. To this end, we would ask you to notify all your primary carriers of your desire to have them so proceed, and advise us of your intentions within 30 days."

Continued

© 198 Andrews Publications, Inc., All Rights Reserved Reproduction in whole or part strictly prohibited.

2005173345

Source: https://www.industrydocuments.ucsf.edu/docs/fmnk0000

Continued from P. 3,111

To primary insurers, Commercial Union wrote, "It is our view that it is essential that, in order to give our mutual insured maximum coverage and protection, both the tobacco industry and the U.S. Government must be made active participants in this litigation and to pay their fair share of the damages. Accordingly, we respectfully request that you give serious and immediate consideration to commencing third-party actions for contribution or indemnification..."

Commercial Union acknowledged that it had sent the letters, but would not comment on the contents. Nor would the company reveal how many defendants and insurance companies were written, although a spokesman said the letters went to "several" recipients. Two defendants who carry their primary insurance with Commercial Union--Standard Asbestos Corp. and Sepco Corp.--already have filed suits against the tobacco industry in California (See Asbestos LR 2/13/81, P. 2,923 and 9/26/80, P. 2,372). While Commercial Union executives have said they expect other insurers to join them in filing cross-complaints, none has yet done so.

Moreover, last Monday, Standard filed a fourth-party complaint against the U.S. in the Eastern District of Texas, Tyler Division--the first of what is rumored to be scores of complaints that it expects to file in the coming weeks (See P. 3,122). Standard and Commercial had been named as third-party defendants in the action by Johns-Manville Corp.

Several attorneys have criticized the tobacco complaints as a tactical error by Commercial Union, saying that asbestos manufacturers are better off proceeding under the "empty chair" theory. By not actually bringing in tobacco as a defendant, they reason, the harmful effects of tobacco can be brought out to a jury without cigarette manufacturers in the court to defend their product.

In its letter to one defendant, Commercial Union wrote, "It is an established fact that smoking cigarettes and other forms of tobacco causes lung cancer and other debilitating lung diseases. Additionally, recent case law has indicated that the Government's knowledge of asbestos hazards has caused them to be exposed to liability. See, e.g., Barlieb v. Turner." (See Barlieb in Asbestos LR 12/12/80, P. 2,647.) To insurers, Commercial Union wrote, "A thorough investigation of all of the available facts has convinced us that both the tobacco industry and the U.S. government should be involved in and should also share in the liability exposure in these suits, and we would, of course, be willing to share the results of this investigation with you."

Commercial Union told the primary insurers that because it would be "directly affected by any delays," it should be informed within 30 days of any action taken or planned against cigarette makers and the federal government.

It is unknown what action, if any, Commercial Union might take against those who refuse to file third-party actions. One insurance company attorney said he feels that until current litigation against the tobacco industry and the federal government is decided, "we're being asked to spend an awful lot of money and effort" to duplicate complaints already on the books.

***

© 1981 Andrews Publications, Inc., All Rights Reserved Reproduction in whole or part strictly prohibited.

1005117346

Source: https://www.industrydocuments.ucsf.edu/docs/fmnk0000

© 1981 Andrews Publications, Inc. All Rights Reserved

Reproduction in whole or part strictly prohibited.

Commercial Union Assurance Companies

EXECUTIVE OFFICES: ONE BEACON STREET, BOSTON, MASSACHUSETTS 02108

March 13, 1981

[redacted]

Attn: [redacted]

Re: ASBESTOS LITIGATION
INSURED: [redacted]

Dear Mr. [redacted]

We have forwarded the enclosed self-explanatory letter to your primary insurance company.

As you know, the involvement and proper liability of the tobacco industry and the United States of America in this asbestos litigation is becoming obvious.

It is an established fact that smoking cigarettes and other forms of tobacco causes lung cancer and other debilitating lung diseases. Additionally, recent case law has indicated that the Government's knowledge of asbestos hazards has caused them to be exposed to liability. See, e.g., Berlieb v. Turner; Civ. No. 78-1027; E.D. Pa., October, 1980.

We believe that you should give immediate consideration to joining these parties in your asbestos lawsuits in order to obtain the maximum possible indemnity protection from your insurance coverage. Clearly, it is the legal obligation of your carriers to undertake this effort in your behalf without regard for the potential defense costs that may be involved. To this end, we would ask you to notify all your primary carriers of your desire to have them so proceed, and advise us of your intentions within thirty (30) days.

If you have any questions, please feel free to contact the undersigned.

Very truly yours,

Michael F. Sommerville
Manager, Special Claims Unit
Home Office Claims Department
Tel. (617) 725-6526

MFS/bg
encl.

100511734?

FILED
U S DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 23 1981
MURRAY L. HARRIS, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS, TYLER DIVISION

LOYD B. DOSIER,

Plaintiff,

-against-

JOHNS-MANVILLE SALES CORPORATION, ET AL,

Defendants.

JOHNS-MANVILLE SALES CORPORATION,

Defendant and Third-Party Plaintiff,

-against-

ATLAS ASBESTOS COMPANY, LTD., ET AL

Third-Party Defendant.

STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY,

Third-Party Defendant and Fourty-Party Plaintiff,

-against-

THE UNITED STATES OF AMERICA,

Fourth-Party Defendant.

CIVIL ACTION NO. TY-80-108-CA

FOURTH-PARTY COMPLAINT OF STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY

AND NOW COMES Fourth-Party Plaintiff STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY ("Standard") and brings this Fourth-Party Complaint against the UNITED STATES OF AMERICA ("USA") for indemnification and/or

100511734?A

Source: https://www.industrydocuments.ucsf.edu/docs/fmnk0000

© 1981 Andrews Publications, Inc. All Rights Reserved

Reproduction in whole or part strictly prohibited.

Commercial Union Assurance Companies

EXECUTIVE OFFICES: ONE BEACON STREET, BOSTON, MASSACHUSETTS 02108

March 13, 1981

[redacted]

Attn: [redacted]

Re: ASBESTOS LITIGATION
INSURED: [redacted]

Dear Mr. [redacted]

We have forwarded the enclosed self-explanatory letter to your primary insurance company.

As you know, the involvement and proper liability of the tobacco industry and the United States of America in this asbestos litigation is becoming obvious.

It is an established fact that smoking cigarettes and other forms of tobacco causes lung cancer and other debilitating lung diseases. Additionally, recent case law has indicated that the Government's knowledge of asbestos hazards has caused them to be exposed to liability. See, e.g., Berlieb v. Turner; Civ. No. 78-1027; E.D. Pa., October, 1980.

We believe that you should give immediate consideration to joining these parties in your asbestos lawsuits in order to obtain the maximum possible indemnity protection from your insurance coverage. Clearly, it is the legal obligation of your carriers to undertake this effort in your behalf without regard for the potential defense costs that may be involved. To this end, we would ask you to notify all your primary carriers of your desire to have them so proceed, and advise us of your intentions within thirty (30) days.

If you have any questions, please feel free to contact the undersigned.

Very truly yours,

Michael F. Sommerville
Manager, Special Claims Unit
Home Office Claims Department
Tel. (617) 725-6526

MFS/bg
encl.

100511734?

FILED
U S DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MAR 23 1981
MURRAY L. HARRIS, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS, TYLER DIVISION

LOYD B. DOSIER,

Plaintiff,

-against-

JOHNS-MANVILLE SALES CORPORATION, ET AL,

Defendants.

JOHNS-MANVILLE SALES CORPORATION,

Defendant and Third-Party Plaintiff,

-against-

ATLAS ASBESTOS COMPANY, LTD., ET AL

Third-Party Defendant.

STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY,

Third-Party Defendant and Fourty-Party Plaintiff,

-against-

THE UNITED STATES OF AMERICA,

Fourth-Party Defendant.

CIVIL ACTION NO. TY-80-108-CA

FOURTH-PARTY COMPLAINT OF STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY

AND NOW COMES Fourth-Party Plaintiff STANDARD ASBESTOS MANUFACTURING AND INSULATING COMPANY ("Standard") and brings this Fourth-Party Complaint against the UNITED STATES OF AMERICA ("USA") for indemnification and/or

100511734?A

Source: https://www.industrydocuments.ucsf.edu/docs/fmnk0000

COMMERCIAL UNION ACTIONS

Commercial Union Assurance Companies
EXECUTIVE OFFICES ONE BEACON STREET, BOSTON, MASSACHUSETTS 02108

March 13, 1981

[redacted]

Re: INSURED: [redacted]
ASBESTOS LITIGATION

Dear Sir:

You have previously advised Commercial Union of your involvement as a primary insurance carrier in the asbestos litigation for the above-named insured. As you know, Commercial Union has excess insurance coverage on the above insured for the same alleged losses. Commercial Union has also been actively involved as the primary carrier defending other asbestos manufacturers, distributors, and suppliers.

A thorough investigation of all of the available facts has convinced us that both the tobacco industry and the U.S. Government should be involved in and should also share in the liability exposure in these suits, and we would, of course, be willing to share the results of this investigation with you.

It is our view that it is essential that, in order to give our mutual insured maximum coverage and protection, both the tobacco industry and the U.S. Government must be made active participants in this litigation and to pay their fair share of the damages. Accordingly, we respectfully request that you give serious and immediate consideration to commencing third-party actions for contribution or indemnification against the tobacco companies or entire tobacco industry, as well as the United States Government in all appropriate lawsuits. Additionally, we request that you commence independent actions for contribution or indemnification against specified tobacco companies or the tobacco industry, as the case may be, and the United States Government to recover monies paid on behalf of the above insured as a result of any settlement or adverse judgment in an asbestos action.

Since delay may adversely affect the claims for contribution or indemnification, and since the Statute of Limitations is continuously running on some of the above described claims, it is essential that your immediate consideration be given to this matter. As Commercial Union will be directly effected by any delays, please advise the undersigned in writing, forthwith, but in no event later than thirty (30) days from the date of this letter, as regards any actions you may have already taken in this matter, as well as your plans for immediate future action.

Kindly note that a copy of this communication is being forwarded to our insured.

If you have any questions, please feel free to contact the undersigned.

Yours very truly,

Michael F. Somerville
Manager, Special Claims Unit
Home Office Claims Department
Tel. (617) 725-6526

MFS/bg

1005117348

120 1981 Andrews Publications, Inc., All Rights Reserved Reproduction in whole or part strictly prohibited.

Source: https://www.industrydocuments.ucsf.edu/docs/fmnk0000